Supreme Court, U.S.
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No. 06-1633

IN THE

Supreme Court of the United States

FAITH CENTER CHURCH EVANGELISTIC MINISTRIES AND HATTIE HOPKINS,
Petitioners,

v.

FEDERAL D. GLOVER, MARK DESAULNIER, JOHN M. GOIA, MILLIE GREENBERG, JOHN W. SWEETEN, ANNE CAIN, PATTY CHAN, LAURA O'DONAHUE AND GAYLE B. UILKEMA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court should review the Ninth Circuit's narrow and fact-specific holding that when a religious entity itself designates a class of speech as "pure religious worship," that speech may be treated as a separate "subject matter" for purposes of limited forum analysis.

2. Whether this Court should review the Ninth Circuit's application of well-settled forum-law principles to the factual circumstances of this case.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

This case is about the unusual circumstance in which a religious entity seeking access to a limited public forum *itself* describes its proposed use as consisting entirely of pure religious worship. Because the narrow and fact-specific decision below relies critically on Faith Center's *own* distinction between its religious worship services and its other religious speech, it does not implicate – and would not give this Court a chance to address – any broader issues that arise when a court or other governmental entity attempts to draw a principled line between religious worship and religious speech. Nor does it conflict with any decision of another court of appeals, for the simple reason that the other federal circuits have yet to address the uncommon factual situation presented here. There is no reason for this Court to grant certiorari review.

STATEMENT OF THE CASE

A. Factual Background

Contra Costa County ("County") generally makes its public library meeting rooms available to the public during normal operating hours "for educational, cultural and community related meetings, programs and activities." Pet. App. 3a. But the County restricts use of its public library meeting rooms in various respects. Meeting rooms "are available to schools only for special meetings, programs or activities," and may not be used for "instructional purposes as a regular part of the curriculum." *Id.* In addition, organizations that charge admission for their meetings, or engage in soliciting or selling during meetings, must pay a fee to use the meeting rooms. *Id.* And the County does not

permit its library meeting rooms to be used for "religious services."[1]

In order to monitor compliance with these policies, the County requires that groups submit an application form for each requested use of a public library meeting room, identifying the applicant and the purpose of the meeting. *Id.*

This case began in May 2004, when petitioner Faith Center Church, led by Pastor Hattie Hopkins, submitted applications to use the meeting room of the Antioch Branch Library ("Library") on May 29 and July 31, 2004. The applications described the purpose of the proposed Faith Center meetings as "Prayer, Praise and Worship Open to the Public, Purpose to Teach and Encourage Salvation thru Jesus Christ and Build up Community." *Id.* at 4a. By holding these worship services in a public library rather than a church – and doing so on a regular basis, every other month, *id.* at 6a – Pastor Hopkins hoped to reach individuals "who need to hear about the gospel of Jesus Christ but who may never enter a traditional church building." *Id.* at 4a.

Faith Center advertised its first meeting with a flyer stating:

> Coming to Antioch, California, on May 29, 2004, where the power of God would be moving to bring miracles into your life. "For this is the hour of the believer," thus saith the Lord, for divine impartation of spiritual gifts, and empowerment, for the body of Christ to move forward in total victory. Come and receive your blessing!

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[1] The County's policy concerning religious expression in library meeting rooms has been amended since the start of this litigation. At the time Faith Center submitted its applications in May 2004, County policy prohibited use of library meeting rooms for "religious purposes." The current policy, adopted in December 2004, is substantially narrower, excluding only "religious *services*" from the meeting rooms. Pet. App. 3a (emphasis added).

Id. at 4a-5a. The flyer went on to divide Faith Center's activities into two parts: a "Wordshop" from 11:00 a.m. to 12:00 p.m., discussing "how to pray fervent, effectual prayers that God hears and answers," and an afternoon "Praise and Worship" service from 1:00 p.m. to 3:00 p.m., with a sermon by Pastor Hopkins. *Id.* at 5a. Critically, Faith Center itself understood the afternoon session to be devoted to "pure religious worship services." *Id.* at 8a.

At the end of the May 29 meeting, the Library advised Faith Center that its proposed meetings were prohibited by the County policy concerning performance of religious services in library meeting rooms. The County later cancelled Faith Center's planned July 31 meeting.

B. Proceedings Below

On July 30, 2004, Faith Center sued the County, seeking to enjoin enforcement of the restriction on religious services. Before the district court, the County agreed that Faith Center's proposed morning sessions – "Wordshops" like that described in the flyer for the May 29 event – involved the kind of religious speech and activity to which the County has opened its library meeting rooms. *Id.* at 5a-6a. But the County viewed the afternoon "Praise and Worship" sessions as "religious *services*" falling outside the general purpose for which the meeting rooms had been opened to the public. *Id.* at 7a.

The district court, relying in part on the Second Circuit's now-vacated judgment in *Bronx Household of Faith v. Board of Education*, 331 F.3d 342 (2d Cir. 2003), granted Faith Center's motion for a preliminary injunction. Pet. App. 77a-80a; Pet. 6-7. The district court concluded that religious "worship" cannot be distinguished from other forms of religious speech, and that exclusion of religious worship from a forum open to other religious speech would constitute impermissible viewpoint discrimination. Pet. App. 8a.

The Ninth Circuit reversed. The Court of Appeals began by acknowledging that religious worship is a form of speech protected by the First Amendment. *Id.* at 12a. But the Constitution, as the court explained, "does not guarantee that all forms of protected speech may be heard on government property." *Id.* (citing *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985)). The question, the Ninth Circuit reasoned, was whether the Library meeting room constituted a "designated public forum," as Faith Center argued, so that a content-based restriction on religious services would be presumptively impermissible, or a "limited public forum," from which the County could exclude certain subject matters so long as the exclusions are reasonable in light of the purposes of the forum. Pet. App. 14a.

Applying this Court's leading cases on forum analysis, the Ninth Circuit held that the County had established only a limited public forum in its library meeting rooms. The court analyzed the forum at issue by examining "'the policy and practice of the government, the nature of the property and its compatibility with expressive activity, and whether the forum was designed and dedicated to expressive activity.'" *Id.* at 15a (quoting *Children of the Rosary v. City of Phoenix*, 154 F.3d 972, 976 (9th Cir. 1998) (citing *Cornelius*, 473 U.S. at 802-03)). In particular, the court relied on the following factors in finding that the Library meeting room was a limited public forum:

- that the County "excludes schools from using the meeting room 'for instructional purposes as a regular part of the curriculum,'" *id.* at 17a;
- that the County "excludes organizations who wish to engage in 'religious services,'" *id.*;
- that the County "requires a potential user to submit an application describing the intended use and identifying the applicant," *id.*;

- that the County requires applicants to pay a fee "for meetings that are closed to the general public, for which an admission fee is charged, or at which soliciting or selling takes place," *id.*; and
- that the forum in question is located in a public library, which is "quintessentially 'a place dedicated to quiet, to knowledge, and to beauty," *id.* at 18a (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966), and "whose very purpose is to aid in the acquisition of knowledge through reading, writing and quiet contemplation," *id.* (internal quotations and citation omitted).

Having concluded that the Library meeting room was a limited public forum, the Ninth Circuit next applied the legal standard that governs such fora, which permits the government to restrict access "'based on subject matter . . . so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.'" *Id.* (quoting *Cornelius*, 473 U.S. at 806). The court acknowledged that "[t]he distinction between regulation on the basis of subject matter and viewpoint . . . 'is not a precise one.'" *Id.* at 22a (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 831 (1995)). It concluded, however, that "pure religious worship" is not a viewpoint, but rather a separate "category of discussion," excludable from a limited public forum as a distinct "subject matter." *Id.* at 29a.

Critical to the court's decision was Faith Center's admission before the district court that its "afternoon activities constituted pure religious worship services." *Id.* at 28a. Faith Center argued before the Ninth Circuit that religious worship could not be distinguished meaningfully from other forms of religious speech. But that issue, the Ninth Circuit reasoned, was not presented by this case: "That distinction . . . was already made by Faith Center itself

when it separated its afternoon religious worship services from its morning activities." *Id.* at 35a.

For the same reason, the Ninth Circuit distinguished this case from *Bronx Household of Faith v. Board of Education*, 331 F.3d 342 (2d Cir. 2003) (*Bronx Household II*), which at the time was governing Second Circuit law. *See* Pet. App. 30a-31a. Unlike the proposed worship service in this case – expressly distinguished by Faith Center from its other religious speech – Bronx Household of Faith's proposed meetings "did not 'constitute only religious worship, separate and apart from any teaching of moral values.'" *Id.* at 30a (quoting *Bronx Household II*, 331 F.3d at 354). Rather, like the religious activities considered by this Court in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), they "combin[ed] teaching with 'elements of worship.'" *Id.* (quoting *Good News Club*, 533 U.S. at 138 n.3.). *Bronx Household II* was "inapposite" here, the court concluded, because Faith Center's afternoon activities were not "simply . . . 'elements of worship' that further secular goals," but "consisted entirely of praise and religious worship." *Id.* at 30a-31a.

Because the County's exclusion of religious services from its public library meeting rooms was a permissible subject-matter restriction that was reasonable in light of the purpose of the limited public forum the County had created, the Ninth Circuit reversed the district court's injunction. Faith Center's petition followed.

REASONS FOR DENYING THE WRIT

Faith Center seeks review primarily on the ground that the Ninth Circuit decision distinguishes religious worship from other forms of religious speech, creating a conflict with the decision of the Second Circuit in *Bronx Household II*. But there simply is no conflict between the Ninth Circuit decision and *Bronx Household II*, and the Second Circuit recently vacated its judgment in that case. In any event, the Ninth Circuit's distinction between religious worship and

other religious speech turns critically on a unique factual feature of this case – Faith Center's willingness to draw that distinction itself – and thus has no broader import for other cases. The rest of the Ninth Circuit's decision involves no more than application of settled principles of forum analysis to the particular facts presented. Nothing about this case warrants certiorari review.

I. THERE IS NO CONFLICT BETWEEN THE NINTH AND SECOND CIRCUITS.

Faith Center rests its argument for certiorari primarily on an alleged conflict between the decision below and the holding of the Second Circuit in *Bronx Household II*. There is no conflict between those decisions, however, because they address entirely different factual scenarios. Moreover, since Faith Center's petition was filed, the Second Circuit has vacated the injunction affirmed in *Bronx Household II*, removing any possible basis for asserting a circuit conflict on whether religious worship services may be excluded from a limited public forum.

As the Ninth Circuit held, *Bronx Household II* presented no actual conflict with the decision below. In *Bronx Household II* – unlike this case – the religious activities in question were *not* designated "pure religious worship," but rather combined "elements of worship" with teaching, fellowship and other religious speech. Pet. App. 30a-31a; *Bronx Household II*, 331 F.3d at 347, 354. On that particular factual basis, the Second Circuit found it likely that exclusion of the activities in question would constitute impermissible viewpoint discrimination. *Bronx Household II*, 331 F.3d at 354. Indeed, the Second Circuit specifically left unresolved the question whether pure religious worship could be treated as an entirely distinct type of activity or speech and thus excluded from a limited public forum. *Id.* at 355. The Second Circuit had no occasion to address the factual situation that would be presented – as it was in this

case – if a church itself conceded that its activities constituted pure religious worship.

In any event, there is certainly no ground to argue for a conflict now that the Second Circuit has vacated its judgment in *Bronx Household II*. The Second Circuit revisited *Bronx Household II* when the New York Board of Education modified its policy to exclude only "religious worship services," and notified Bronx Household that its use of the public schools for regular worship services was prohibited under the revised policy. *See Bronx Household of Faith v. Bd. of Educ.*, -- F.3d --, 2007 WL 1880477, at *4-*5 (2d Cir. July 2, 2007) (*Bronx Household III*). Bronx Household sued, and the district court granted the church's motion for summary judgment, converting the preliminary injunction of *Bronx Household II* into a permanent injunction enjoining the school board from enforcing its newly revised policy. *Id.* at *5. On appeal, Bronx Household conceded, as did Faith Center in this case, that its activities constituted a "worship service." *Id.* Thus, in *Bronx Household III* the Second Circuit was presented for the first time with the question raised in this case: whether religious worship services – as defined by the religious entity in question – may be excluded from a limited public forum as a distinct category of expression.

On July 2, 2007, the Second Circuit ruled, vacating the permanent injunction but failing to resolve the underlying substantive question. Two judges voted to vacate the injunction, but on different grounds: one because the exclusion of religious services was viewpoint-neutral and thus permissible, and one because the issue was not ripe for decision. *Id.* at *1, *8, *14. The third judge would have affirmed the injunction on the grounds that exclusion of religious worship constituted unconstitutional viewpoint discrimination. *Id.* at *1, *28. Thus, no injunction remains in place in *Bronx Household* – nullifying any conflict with the decision below – and the Second Circuit has yet to decide

whether activity that is concededly pure religious worship may be excluded from a limited public forum.

In its per curiam opinion, the Second Circuit noted that "the City is free to adopt" and enforce its revised policy – which mirrors the policy at issue in this case – and invited the parties to pursue their case to a final resolution on the merits. *See id.* at *1. Indeed, the court encouraged the parties to seek expedited review before the same panel. *Id.* If the Second Circuit ultimately adopts a position that conflicts with that taken by the Ninth Circuit, this Court can consider at that time whether the conflict warrants review. But the fact that the Second Circuit is foreshadowing a decision on the merits of the question presented here only confirms that there is no present conflict between the Second and Ninth Circuits, and thus no basis for certiorari review.

II. THE NINTH CIRCUIT HELD ONLY THAT WHEN A RELIGIOUS ENTITY ITSELF DESIGNATES AN ACTIVITY AS PURE RELIGIOUS WORSHIP, THAT ACTIVITY MAY BE EXCLUDED FROM A LIMITED PUBLIC FORUM.

Faith Center also argues that the decision below conflicts with decisions of this Court, principally *Widmar v. Vincent*, 454 U.S. 263 (1981), because it rests on an impermissible distinction between religious worship services and other types of religious speech. Pet. 13-14, 19-21. In fact, the Ninth Circuit's holding does not conflict with *Widmar* or any of this Court's cases addressing speech that expresses a religious viewpoint on a secular subject. That is because in this case, unlike those cited by respondent, Faith Center itself has drawn the distinction between its worship services and its other religious speech, and has conceded that the activity

in question – the afternoon "Praise and Worship" session – falls on the pure worship side of the line.[2]

As this Court suggested in *Widmar*, 454 U.S. at 269 n.6, and the Ninth Circuit recognized below, Pet. App. 35a-36a, defining and then judicially administering a meaningful distinction between religious worship and other forms of religious speech may be difficult and even constitutionally problematic. But as the Ninth Circuit also recognized, that issue simply is not presented here because, in this case, the religious entity *itself* has drawn the distinction on which the County is relying:

> The distinction to be drawn here . . . one between religious worship and virtually all other forms of religious speech [is] one that the government and the courts are not competent to make. That distinction, however, was already made by Faith Center itself when it separated its afternoon religious worship service from its morning activities. . . . The County may not be able to identify whether Faith Center has engaged in pure religious worship, but Faith Center can and did.

Id.

That unusual fact takes this case outside the concerns raised by the Court in *Widmar*, and distinguishes it from *Good News*, which involved religious activity that combined

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[2] Contrary to petitioners' claim (Pet. 14), the Ninth Circuit did not hold that religious worship is unprotected by the First Amendment. Indeed, the Ninth Circuit expressly held to the contrary: "We conclude that Faith Center engaged in protected speech when its participants met in the Antioch Library for prayer, praise and worship." Pet. App. 11a. The question before the Ninth Circuit was not whether Faith Center's religious worship was protected by the First Amendment, but whether it constituted a separate "subject matter" that may be excluded from a *limited public forum*, just as other forms of protected speech may be excluded. *Id.* at 19a-21a; *see infra* Part III (discussing limited public forum doctrine).

elements of religious worship with other forms of speech expressing a religious perspective on the secular subject of moral and character development. *Good News Club*, 533 U.S. at 109-12; *see also Bronx Household II*, 331 F.3d at 354 (ruling is "confined to the district court's finding" that the religious activities in question are "not simply religious worship, divorced from any teaching of moral values or other activities permitted in the forum"). This case provides no occasion for addressing the problems raised when the *government*, rather than a church itself, attempts to distinguish between religious worship and other forms of religious speech.

Because the Antioch Library's meeting room is a limited public forum, the County is entitled to restrict access based on reasonable subject-matter distinctions. *See Good News Club*, 533 U.S. at 106-07. The Ninth Circuit's holding that the County could rely on a distinction between religious worship services and other religious speech is narrow and fact-specific, resting critically on the ground that Faith Center itself divided its activities into those groupings. Nothing about that narrow holding, resting on an unusual factual predicate, warrants certiorari review.

III. THE NINTH CIRCUIT'S FORUM ANALYSIS IS IN ACCORD WITH THE DECISIONS OF THIS COURT AND OF THE COURTS OF APPEALS.

Faith Center argues that the Ninth Circuit's designation of the Library meeting room as a limited public forum is mistaken and in conflict with decisions of this Court and other courts of appeals. Not so. The Ninth Circuit faithfully applied well-established Supreme Court precedent regarding forum analysis to the specific factual circumstances before it. That other courts of appeals have reached different conclusions when applying the same legal standard to different facts is hardly surprising, and does not in any way suggest that the lower courts are divided or confused when it comes to identifying the governing principles in this area.

1. This case involves the distinction between a designated public forum – "public property which the State has opened for use by the public as a place for expressive activity" – and a limited public forum – a forum not traditionally open to expressive activity that nevertheless has been opened to certain groups for the discussion of certain topics. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). As this Court has made clear, drawing the line between the two types of fora is an extremely fact-sensitive enterprise, turning on such factors as the government's intent in creating the forum, the "policy and practice of the government" with respect to the forum, and "the nature of the property and its compatibility with expressive activity." *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802 (1985).

There is no question that the Ninth Circuit here correctly identified and applied that well-established legal standard. Pet. App. 13a (citing *Cornelius*). The court examined all of the relevant factors under the correct legal principles before concluding that the County had not evinced an intent (or practice) of opening public library meeting rooms "for indiscriminate use by the general public." *Perry*, 460 U.S. at 47. The Ninth Circuit's analysis turned on the specific facts before it: that, in addition to excluding religious services, the County's policy also "excludes schools from using the meeting room 'for instructional purposes as a regular part of the curriculum,'" "requires a potential user to submit an application describing the intended use and identifying the applicant," and "requires an applicant to pay a fee for certain proposed uses." Pet. App. 17a. The Ninth Circuit also found it significant that "the County has consistently applied its policy restrictions," and apparently had never "failed to screen an application or . . . granted access to an applicant on a non-policy basis." *Id.* Only after assessing these unique factual circumstances did the Ninth Circuit conclude that "the County has demonstrated its desire to limit access to the library meeting room for certain purposes and speakers." *Id.*

The Ninth Circuit's careful application of settled law to the facts before it does not merit this Court's review.

2. Nor does the decision below present any conflict with cases from other courts of appeals. The variance in *outcomes* cited by Faith Center, *see* Pet. 23-28, is the result of variances in the factual circumstances before the courts, and not any conflict over the legal standard to be applied.

In *Gregoire v. Centennial School District*, 907 F.2d 1366 (3d Cir. 1990), for instance, the Third Circuit rested its conclusion that a school district had created a designated public forum on two key facts, neither of which is present here: that the district's definition of its forum was "so vague that [the district] has virtually unlimited discretion in deciding which groups qualify and which do not," and thus could "'arbitrarily deny access . . . to any unfavored student club on the basis of its speech content,'" *id.* at 1374-75 (internal quotation omitted); and that the district had not consistently applied its own restrictions, giving "tenuous and internally inconsistent grounds" for excluding religious activity, *id.* at 1378-79. Indeed, the Third Circuit emphasized that "the basis of [its] holding is narrow," turning on the inconsistent application of purported criteria for entrance to the forum. *Id.* at 1379.

Other decisions cited by Faith Center also rely heavily on inconsistent or selective application of access policies. In *Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32 (1989), the Fifth Circuit found that a library had created a public forum where, contrary to its contention that the library was open "only to groups meeting for artistic or educational purposes," the library had in fact allowed a diverse array of groups to use its auditorium, including a potluck luncheon of the National Association of Retired Federal Workers, a meeting of U.S. Navy recruiters, and a meeting of the Oxford Swim Club. *Id.* at 33-34. And in *Grace Bible Fellowship v. Maine School Administrative District No. 5*, 941 F.2d 45 (1st Cir. 1991), although the

school had a stated policy that "access to school facilities should be limited to uses reasonably compatible with the mission and function of the school district in the community," the school in fact opened its facilities to "any group other than to religious organizations." *Id.* at 47.

In the decision below, by contrast, the Ninth Circuit expressly found that the County had applied its library-access policies consistently, to all applicants for library meeting space. Pet. App. 17a ("The record indicates that the County has consistently applied its policy restrictions. Faith Center does not contend that the County has ever failed to screen an application or that the County has granted access to an applicant on a non-policy basis."). That the Ninth Circuit reached a different outcome than the courts cited by Faith Center reflects only this crucial difference in factual circumstances, and not any conflict regarding the governing legal principles.

In *Fairfax Covenant Church v. Fairfax County School Board*, 17 F.3d 703, 704, 706 (4th Cir. 1994), also cited by Faith Center, the School Board itself conceded that it had created a public forum by opening its facilities "to a wide array of private, community, religious and cultural organizations, both commercial and nonprofit." The Fourth Circuit thus had no reason even to entertain the idea that the school's facilities might constitute a limited public forum. And the district court decisions cited by Faith Center, Pet. 25-28 – which in any event would not support its claim of circuit-court conflict – likewise reflect no confusion regarding the governing legal standard, but only application of that standard to disparate factual circumstances.[3]

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[3] *See Shumway v. Albany County Sch. Dist. No. One Bd. of Educ.*, 826 F. Supp. 1320, 1325 (D. Wyo. 1993) (school's policy of providing for "open access and use of the district's school facilities by the public, so long as those users did not interfere with school activities" created a public forum); *Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F. Supp. 704, 708 (M.D. Ala. 1991) (public forum created

3. Faith Center also argues that the Court should grant review in this case in order to adopt a brand new rule of forum law: that in order to create a limited public forum, the government must restrict access to a single category of speakers or subject matter. Pet. 29. Any such rule would be flatly inconsistent with this Court's precedents, which make clear that the government may create a limited public forum for a far broader range of speech. *See, e.g., Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 824, 829-30 (1995) (university student activities fund treated as limited public forum where fund supports "a broad range of extracurricular student activities that are related to the educational purpose of the University"). It also would have a pronounced chilling effect on the ability of government entities to open their property for a limited category of speech activities: if a government wishes to permit more than one kind of speech, then under Faith Center's proposed rule, it must effectively open a town square in which virtually all speech is permitted.

In any event, and more important here, Faith Center's preference for a new rule of constitutional law is not grounds for granting certiorari. There is no conflict of authority

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when school board's policy was to "allow virtually any group to lease the auditoriums . . . , including churches and other organizations seeking to use the facilities for religious functions"); *Wallace v. Washoe County Sch. Dist.*, 818 F. Supp. 1346, 1350 (D. Nev. 1991) (school had created an open forum where its facilities were open to "community groups" for "worthwhile purposes," and where the school had allowed other religious groups in the past); *Country Hills Christian Church v. Unified Sch. Dist. No. 512*, 560 F. Supp. 1207, 1215 (D. Kan. 1983) (public forum created where school facilities broadly dedicated for use by "recognized community groups"); *Randall v. Pegan*, 765 F. Supp. 793, 796 (W.D.N.Y. 1991) (holding that the school "maintain[ed] an 'open forum policy' toward[] all civic, private and student groups, both religious and nonreligious, who seek to use its facilities during noninstructional hours").

regarding the "one category only" rule advanced by Faith Center, and no justification for this Court's intervention.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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